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SERVICE DATE – LATE RELEASE FEBRUARY 28, 2006

SURFACE TRANSPORTATION BOARD

DECISION

STB Finance Docket No. 34830

KANSAS CITY TRANSPORTATION COMPANY LLC—LEASE AND ASSIGNMENT OF
LEASE EXEMPTION—KANSAS CITY TERMINAL RAILWAY COMPANY AND KAW
RIVER RAILROAD, INC.

STB Finance Docket No. 34831

KANSAS CITY TERMINAL RAILWAY COMPANY—INTRA-CORPORATE
EXEMPTION—KANSAS CITY TRANSPORTATION COMPANY LLC

Decided: February 28, 2006

By notice of exemption filed in STB Finance Docket No. 34830 on February 22, 2006, Kansas City Transportation Company LLC (KCTL), a noncarrier, seeks to acquire by lease from Kansas City Terminal Railway Company (KCT) approximately 25.73 miles of track in the Kansas City Terminal District in Jackson County, MO, and Wyandotte County, KS. KCTL also seeks to acquire by assignment from Kaw River Railroad, Inc. (KRR) the operating and lease rights over all of the tracks owned by KCT which are currently subleased to KRR and over all of the tracks owned by The Kansas City Southern Railway Company (KCS) which are leased to KRR. By notice also filed on February 22 in STB Finance Docket No. 34831, KCT seeks to remain in control of KCTL once KCTL becomes a Class III rail carrier. Upon KCTL's lease of the KCT track and assumption of KRR's rights and obligations, KCTL will have a common carrier obligation as to all track currently operated by KRR, as well as the balance of the KCT track currently operated by KCS that was not subleased to KRR. KCTL states that the parties intend to consummate the transactions on March 1, 2006.

On February 27, 2006, the Brotherhood of Locomotive Engineers and Trainmen, a Division of the Rail Conference, International Brotherhood of Teamsters (BLET), filed a petition for a stay of the transactions encompassed by the notices of exemption. Among the reasons that it claims a stay is warranted, BLET asserts that it is likely to prevail on the merits of a forthcoming petition to reject the notices or revoke the exemptions. Specifically, BLET argues that the Board should reject the notice (and grant the stay) in STB Finance Docket No. 34830, because, BLET asserts, the Board lacks authority over the proposed transaction. BLET argues that the trackage that is the subject of the notice of exemption in STB Finance Docket No. 34830 is excepted switching track under 49 U.S.C. 10906, and, therefore, the formal licensing requirements of 49 U.S.C. 10901 to acquire and operate this trackage are inapplicable. BLET also argues that KCTL will not, in fact, become a common carrier, and that this transaction is a sham. BLET further argues that railroad employees would suffer irreparable injury in the

absence of a stay, that a stay would injure no other parties, and that the public interest warrants a stay. On February 28, 2006, KCT and KCTL replied in opposition to the stay request.

DISCUSSION AND CONCLUSIONS

An interested party seeking a Board-ordered stay must establish that: (1) there is a strong likelihood that it will prevail on the merits; (2) it will suffer irreparable harm in the absence of a stay; (3) other interested parties will not be substantially harmed; and (4) the public interest supports the granting of the stay. Hilton v. Braunskill, 481 U.S. 770, 776 (1987); Washington Metropolitan Area Transit Commission v. Holiday Tours, Inc., 559 F.2d 841, 843 (D.C. Cir. 1977); Virginia Petroleum Jobbers Association v. FPC, 259 F.2d 921, 925 (D.C. Cir. 1958). On a motion for stay, “it is the movant’s obligation to justify the . . . exercise of such an extraordinary remedy.” Cuomo v. United States Nuclear Regulatory Comm., 772 F.2d 972, 978 (D.C. Cir. 1985). The parties seeking a stay carry the burden of persuasion on all of the elements required for such extraordinary relief. Canal Authority of Fla. v. Callaway, 489 F.2d 567, 573 (5th Cir. 1974).

Here, BLET has not met the criteria for a stay. BLET has not come forward with sufficient evidence and argument to convince the Board that it is likely to prevail in its argument that this transaction does not require Board approval due to the nature of the track. Moreover, even if BLET could establish, as it asserts here, that the trackage involved in STB Finance Docket No. 34830 can be characterized as switching trackage, that would not change the fact that KCTL would become a common carrier by virtue of the transaction. As proposed by KCTL, the transaction would entail a new operation that, by definition, will enable a new carrier to reach territory that is new to it. As the Board stated in the related proceeding of Kaw River Railroad, Inc.—Acquisition and Operation Exemption—The Kansas City Southern Railway Company, STB Finance Docket No. 34509 (STB served May 3, 2005), merely characterizing the proposed operations as switching does not relieve a rail operator of the obligation to obtain a Board license if the operator is holding out common carrier service to the public and the transaction involves its entire line of railroad. See Effingham Railroad Company — Petition for Declaratory Order — Construction at Effingham, IL, STB Finance Docket No. 41986 (STB served Sept. 12, 1997), aff’d sub nom. United Transportation Union-Illinois Legislative Board v. STB, 183 F.3d 606 (7th Cir. 1999).

Likewise, BLET has not presented any evidence to support its contention that this transaction is a sham, nor has it justified the remaining elements required for a stay. Because BLET has failed to establish that a stay is warranted, its request will be denied.

Finally, an attached letter from BLET’s attorney to KCTL’s attorney indicates that petitioner has sought discovery from KCTL. Petitioner may certainly use information obtained in discovery, and any other relevant evidence, to support a petition to reject the notices or to revoke the exemptions, should it choose to do so.

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The petition for stay is denied.
2. This decision is effective on its date of service.

By the Board, W. Douglas Buttrey, Chairman.

Vernon A. Williams
Secretary